

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CONCISE EXPLANATORY STATEMENT

for

PERMANENT RULE CHANGES EFFECTIVE JUNE 16, 2003

IN

**CHAPTER 391-08 WAC
RULES OF PRACTICE AND PROCEDURE**

and

**CHAPTER 391-25 WAC
REPRESENTATION CASE RULES**

July 28, 2003

EXECUTIVE SUMMARY:

Permanent rules were adopted by the Commission on May 13, 2003 amending Chapters 391-08 and -25 WAC to provide for: (1) Publication of agency decisions on website; (2) Consolidation of representation petitions involving any or all of same employees; (3) Merger of state civil service employee bargaining units represented by same employee organization; (4) Repeal of option effective July 1, 2003, for institutions of higher education and exclusive bargaining representatives to bring bargaining units under Chapter 41.56 RCW; and (5) Repeal of special provision modifying intervenor rule for representation petitions involving state civil service employee units.

RULE MAKING PROCEDURE:

The permanent rule changes adopted on May 13, 2003, implement recently enacted state statutes. Agency Contacts:

Mark S. Downing, Rules Coordinator, (360) 570-7305
Marvin L. Schurke, Executive Director, (360) 570-7312

A pre-proposal statement of inquiry (CR-101) was filed pursuant to RCW 34.05.310 on January 14, 2003. Proposed Rule Making (CR-102) was filed pursuant to RCW 34.05.320 on March 19, 2003.

An informal meeting was held on April 16, 2003 in Olympia, to provide an opportunity for clientele to comment on the adoption of permanent rules. The meeting was facilitated by Executive Director Marvin L. Schurke, and Rules Coordinator Mark S. Downing. Agency staff members were present to explain the proposed changes, answer questions, and receive comments from clientele. Suggestions made at the meeting were incorporated into the proposed changes submitted to the Commission for adoption. Documents detailing rule proposals by Commission staff and comments explaining such proposals were posted on the agency website.

A hearing was held at 10:00 a.m. on May 13, 2003, at Second Floor Conference Room, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington. The rule changes were then adopted by the Commission at its meeting on May 13, 2003.

Form CR-103 (Rule-Making Order) was filed with the Code Reviser on May 15, 2003, and was published in Issue 03-11 of the Washington State Register on June 4, 2003. WAC 391-25-011 was repealed effective July 1, 2003. All other rule changes took effect on June 16, 2003.

CHAPTER 391-08 WAC

AMENDATORY SECTION WAC 391-08-670 Decision numbering--Citation of cases--Indexing of decisions.

REASONS FOR CHANGE: Amendments were adopted to reflect current practice concerning publication on the Commission's website of all decisions issued since the agency was created in 1976.

CLIENTELE COMMENTS: Comment filed on April 10, 2003 by Bob Braun of the Braun Consulting Group indicated support for the proposed change.

CHAPTER 391-25 WAC

REPEAL OF SECTION WAC 391-25-011 Special Provision--Optional coverage of classified employees of institutions of higher education under chapter 41.56 RCW

REASONS FOR CHANGE: RCW 41.56.201 was amended in 2002 to limit the option for an institution of higher education and an exclusive bargaining representative to bring a bargaining unit under Chapter 41.56 RCW. As amended in 2002, the option had to be exercised

prior to July 1, 2003. To comply with the statute, section 011 was repealed effective July 1, 2003.

CLIENTELE COMMENTS: Comment filed on April 10, 2003 by Bob Braun of the Braun Consulting Group indicated support for the proposed change. Comment filed on May 5, 2003 by Danny Kraus of the University of Washington agreed with the proposed change.

AMENDATORY SECTION WAC 391-25-210 Bargaining unit configurations.

REASONS FOR CHANGE: Amendments adopted in subsection (2) clarify current practice that a union filing a motion for intervention under WAC 391-25-190 [a union other than the incumbent with a 10% showing of interest] is not permitted to seek a bargaining unit configuration different than the unit proposed by the original petitioner. New subsection (3) is added to provide for consolidation of two or more cross-petitions [each with a 30% showing of interest] pending before the agency at the same time seeking different bargaining unit configurations for any or all of the same employees. Consolidation of pending petitions allows the Commission to fulfill its statutory duty to determine appropriate bargaining unit(s).

CLIENTELE COMMENTS: Comment filed on April 10, 2003 by Bob Braun of the Braun Consulting Group indicated support for the proposed change.

REPEAL OF SECTION WAC 391-25-216 Special Provision--State civil service employees.

REASONS FOR CHANGE: As adopted by the Commission on January 6, 2003, section 216 stated that WAC 391-25-210(2) did not apply to representation petitions involving state civil service employees under Chapter 41.80 RCW, and that an intervenor in such proceedings could not seek a unit configuration other than that proposed by the original petition. With the repeal of section 216, the general rule of WAC 391-25-210 (as amended) applies to representation petitions involving state civil service employees.

CLIENTELE COMMENTS: Comment filed on April 10, 2003 by Bob Braun of the Braun Consulting Group indicated support for the proposed change.

NEW SECTION WAC 391-25-426 Special provision--State civil service employees.

REASONS FOR CHANGE: On January 6, 2003, the Commission adopted section 426 on an emergency basis as proposed by the Washington Federation of State Employees (WFSE). The rule implemented the

following provision of RCW 41.80.070:

(3) If a single employee organization is the exclusive bargaining representative for two or more units, upon petition by the employee organization, the units may be consolidated into a single larger unit if the commission considers the larger unit to be appropriate. If consolidation is appropriate, the commission shall certify the employee organization as the exclusive bargaining representative of the new unit.

The emergency rule became effective on January 14, 2003. As emergency rules only remain in effect for 120 days, the rule was effective through May 14, 2003. Identical language for section 426 was adopted on an emergency and permanent basis by the Commission on May 13, 2003. The emergency adoption of section 426 bridged the time period until the permanent rule took effect on June 16, 2003.

Under section 426, a union desiring to merge bargaining units files a representation petition. By omission of reference to WAC 391-25-420(2)(b), the union is not required to provide a showing of interest from employees indicating support for the merger. If the propriety of the proposed merged unit is disputed, the Commission's executive director would, following a hearing under WAC 391-25-420(2)(c)(i), determine whether the merged unit is an appropriate unit under Chapter 41.80 RCW. If found to be appropriate, an order would issue merging the units without the need for a unit determination election. If the propriety of the merged unit is not contested by the employer, the executive director would determine under WAC 391-25-420(2)(c)(ii) whether the merged unit is, on its face, an appropriate unit under Chapter 41.80 RCW. If so, an order would issue merging the units without the need for a unit determination election.

CLIENTELE COMMENTS: Comment filed on April 10, 2003 by Bob Braun of the Braun Consulting Group indicated support for the new rule. Comment filed on May 5, 2003 by Danny Kraus of the University of Washington voiced concern about how parties would deal with differences in collective bargaining agreements for existing units being merged. Comment filed on May 7, 2003 by Howard Pripas of the University of Washington urged adoption of a presumption that historically separate units petitioned for merger are not appropriate unless there is no objection by any party. A second comment filed by Pripas on May 29, 2003, suggested the following addition to the rule:

For bargaining units petitioned for merger under this rule, the existence of separate bargaining agreements

with substantive difference in terms and conditions will be considered to be significant evidence of a disparity of interests and lack of appropriateness for a merger of those units.

The Commission considered all comments filed prior to its May 13, 2003 meeting. The presumption suggested by the University of Washington was rejected as inconsistent with RCW 41.80.070, which establishes multiple criteria in determining an appropriate bargaining unit. If separate units are merged under section 426 and differences existing in the collective bargaining agreements for such units, the parties will be required to fulfill their statutory collective bargaining obligations under Chapter 41.80 RCW to arrive at a new collective bargaining agreement for the merged unit.